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**UTAH LABOR COMMISSION**

**LINDSAY GERMER,**

**Petitioner,**

**vs.**

**FAMOUS DAVE’S and  
WAUSAU INSURANCE  
COMPANY,**

**Respondents.**

**ORDER AFFIRMING  
ALJ’S DECISION**

**Case No. 05-0318**

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Lindsay Germer asks the Utah Labor Commission to review Administrative Law Judge Sessions’ denial of Ms. Germer’s claim for benefits under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Ms. Germer claims workers’ compensation benefits from Famous Dave’s and its insurance carrier, Wausau Insurance Company (referred to jointly as “Famous Dave’s”), for a work accident that occurred on October 30, 2003, allegedly causing injury to her right knee. After holding an evidentiary hearing, Judge Sessions denied benefits.

In her motion for review, Ms. Germer argues that had Famous Dave’s given her proper notice of the substance of the testimony of one of its witnesses, she would have been able to refute the evidence that she claims led Judge Sessions to conclude there was no legal causation.

**FINDINGS OF FACT**

The Commission adopts Judge Session’s findings of facts. The facts relevant to the motion for review are as follows: On October 30, 2003, Ms. Germer was retrieving trays of meat out of a walk-in cooler at Famous Dave’s. As she held the meat trays in front of her, Ms. Germer kicked on the cooler door with her right foot in order to open the door. She felt immediate pain in her right knee. Although Ms. Germer claims that the door stuck when she kicked it, the evidence demonstrates that it did not stick. Prior to this accident, Ms. Germer had a preexisting right knee condition and had undergone several surgeries to repair the right knee.

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**DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2-401 of the Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" employment. To qualify for benefits under the foregoing standard, an injured worker must establish that his or her work was the "legal cause" of the injury. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). The requirement of legal causation is explained in *Price River Coal Co. v. Industrial Commission*, 731 P.2d 1079, 1082 (Utah 1986):

Under *Allen*, a usual or ordinary exertion, so long as it is an activity connected with the employee's duties, will suffice to show legal cause. However, if the claimant suffers from a pre-existing condition, then he or she must show that the employment activity involved some **unusual or extraordinary exertion** over and above the "usual wear and tear and exertions of nonemployment life". . . The requirement of "unusual or extraordinary exertion" is designed to screen out those injuries that result from a personal condition which the worker brings to the job, rather than from exertions required of the employee in the workplace. (Citations omitted; emphasis added.)

Because Ms. Germer suffered from a preexisting condition that contributed to her current knee problems, her claim is subject to the more stringent test for legal causation, which requires that she show her work related exertion was "unusual or extraordinary." The Commission understands Ms. Germer to argue that her exertion in kicking the door was unusual or extraordinary because the door was stuck and did not swing freely. The Commission has found that the door did not stick. Nevertheless, even assuming the door did stick, the Commission is not convinced that this exertion would qualify as "unusual or extraordinary exertion" as compared to the usual wear and tear exertions of nonemployment life. Therefore, the Commission concludes that Ms. Germer has not satisfied the test for legal causation and cannot prevail on her claim for benefits.

**ORDER**

The Commission affirms Judge Session's decision. It is so ordered.

Dated this 23<sup>rd</sup> day of April, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

**NOTICE OF APPEAL RIGHTS**

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Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

